

New Jersey State Tax News

Winter 1999

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Higher Filing Threshold

Filing Category	Previous Threshold (1998)	New Threshold		
		1999	2000	2001
Married filing jointly, Head of household & Qualifying widow(er)	\$7,500	\$10,000	\$15,000	\$20,000
Married filing separately	\$3,750	\$5,000	\$7,500	\$10,000
Single; estates & trusts	\$7,500	\$10,000	\$10,000	\$10,000

For tax year 1999, the income level at which taxpayers become subject to New Jersey gross income tax and obligated to file a New Jersey gross income tax return has been increased from \$7,500 (\$3,750 if married, filing a separate return) to \$10,000 (\$5,000 if married, filing a separate return). Further increases will occur in tax years 2000 and 2001 as shown in the table above.

The higher filing threshold removes from the tax rolls many lower income people who formerly were subject to the State's income tax and required to file a New Jersey return. Taxpayers with incomes below the new threshold must still file a return to request a refund of any tax that was paid through withholding, estimated payments, etc. New Jersey residents whose income is below the threshold, and who are eligible for

a homestead rebate, must file a homestead rebate application (Form HR-1040). □

important phone numbers

Call Center	609-292-6400
Automated Tax Info	800-323-4400
.....	609-826-4400
Speaker Programs	609-984-4101
NJ TaxFax	609-826-4500
Alcoholic Bev. Tax	609-984-4121
Corp. Lien, Mergers, Withdrawals & Dissolutions	609-292-5323
Director's Office	609-292-5185
Inheritance Tax	609-292-5033
Local Property Tax	609-292-7221
Motor Fuels Tax Refunds ..	609-292-7018
Public Utility Tax	609-633-2576
http://www.state.nj.us/treasury/taxation/	

Nonresident Return Error

The 1999 New Jersey nonresident gross income tax return form (NJ-1040NR) contains an error on page two, Line 39 (Net Gambling Winnings). Column B of that line is incorrectly blacked out making it impossible to enter an amount in that space. The correct location for the blacked out area is Column B, *Line 40* (Pensions, Annuities and IRA Withdrawals).

Nonresident taxpayers with gambling winnings from New Jersey sources to report for 1999 should enter the appropriate amount on Line 40, Column B and write GW in the margin next to this amount. If the taxpayer does not have gambling winnings from New Jersey sources, no amount should be entered on Line 40, Column B since pension, annuity and IRA withdrawal income from New Jersey sources is not taxable to nonresidents.

Taxpayers who were mailed a preprinted label inside their NJ-1040NR booklet were sent a postcard explaining the error. □

Treasurer Sworn In

On December 8, 1999, Roland M. Machold was sworn in as New Jersey's 48th Treasurer by Governor Christine Todd Whitman. Mr. Machold, who spent his early career as an investment banker with Morgan Stanley & Co., served as Director of the New Jersey Division of Investment for 22 years, where, at the time of his retirement in 1998, he was responsible for 152 State funds aggregating \$76 billion. □

"Paperless" Returns

New Jersey offers residents a variety of options for filing their individual State income tax without having to submit a paper return.

NJ PC FILE

Most New Jersey residents with access to a Windows 95/98 based personal computer equipped with a modem can prepare and file their New Jersey gross income tax returns electronically with the aid of NJ PC File, a free software package available from the Division's Web site. For tax year 1999, NJ PC File users who are not required to file a New Jersey income tax return can now file just their Homestead Rebate application.

Taxpayers using NJ PC File will receive their refunds within two weeks of filing. Up-to-date information on NJ PC File is available on the Division's home page:

<http://www.state.nj.us/treasury/taxation/>

NJ TELEFILE

New Jersey residents with gross income of \$150,000 or less may be eligible to TeleFile their State income tax returns/homestead rebate applications using a Touch-tone telephone. The income must have been derived entirely from wages, interest and dividends and neither the interest nor the dividend portion of the income may exceed \$1,000. The taxpayer must use the same filing status used on the previous year's return and may not be claiming an exemption for age 65 or older, or for being blind or disabled. Additional restrictions may apply.

For tax year 1999, taxpayers and their spouses (in cases where a joint return is filed) must "sign"

New Jersey State Tax news

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A subscription to the *State Tax News* is free. To be placed on the mailing list, or to notify us of an address change, write to us at the address above or e-mail us through our Web site at:

<http://www.state.nj.us/treasury/taxation/>

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

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the return electronically by entering their 4-digit TeleFile PIN number to attest to the truthfulness of the information on the return. Previously, TeleFilers provided a “voice” signature as verification.

Refunds claimed on TeleFiled returns are mailed to taxpayers within two weeks of TeleFiling. To TeleFile, call 1-888-235-FILE (3453) from a Touch-tone telephone within New Jersey, or 609-826-4448 from a Touch-tone telephone anywhere.

ELECTRONIC FILING (ELF)

Taxpayers who have access to a personal computer equipped with an appropriate tax preparation software package can use ELF to prepare and file their own State income tax returns. Alternatively, taxpayers may have a tax professional prepare and/or transmit their return in electronic format for them. Taxpayers who file their State returns using ELF must also file their Federal returns via this method. Certain ELF filers may have to complete an Individual Income Tax Declaration for Electronic Filing (Form NJ-8453) when their return is accepted.

Transmitters and Electronic Return Originators (EROs) who wish to participate in the New Jersey ELF program must register with the Division of Revenue each year. Returns submitted by Transmitters or EROs who have failed to register with New Jersey will be rejected. Since this program includes both the Federal and State returns, practitioners participating for the first time should contact the electronic filing coordinator at the IRS Newark District Office. The phone number is 973-645-6690. Registering with the IRS does not

automatically allow transmitters and EROs to participate in New Jersey’s ELF program.

Find out more about New Jersey’s Electronic Filing Program on the Division of Revenue’s Web site:

<http://www.state.nj.us/treasury/revenue/>

or write to:

NJ DIVISION OF REVENUE
ELF
PO Box 191
TRENTON NJ 08646-0191
□

Property Tax Reimbursement

Applications for the Property Tax Reimbursement program were mailed in early 2000. This is the second year of the program that reimburses senior citizens and disabled persons for property tax increases. Eligible applicants should be sure to file their applications on or before March 15, 2000. Reimbursement checks are scheduled to be mailed to qualified applicants on July 15, 2000.

Personalized applications were mailed to individuals who applied for and received a 1998 Property

Tax Reimbursement.

Each applicant’s form was pre-printed with information that was provided on their 1998 application. These individuals need only provide information for 1999 along with copies of property tax bills and proof of the amount of property taxes paid for 1999. Individuals who received a 1998 Property Tax Reimbursement but have not received a personalized application, Form PTR-2, should call the Property Tax Reimbursement Hotline at 1-800-882-6597 to have one mailed to them.

Form PTR-1 will again be available to the general public and must be used by applicants who did **not** receive a 1998 Property Tax Reimbursement. This form was automatically mailed to individuals who applied for but did not receive a 1998 Property Tax Reimbursement. Individuals filing Form PTR-1 will be required to provide information for both 1998 and 1999 along with copies of property tax bills and proof of the amount of property taxes paid for both years.

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<http://www.state.nj.us/treasury/taxation/>
NJ PC File

reimbursement – from page 3

Applicants who cannot locate property tax bills, or proof of the amount of taxes paid, may use a verification form provided in the Property Tax Reimbursement booklet. The form must be completed and certified by the local tax collector and submitted with the application. A verification form is also provided for mobile home owners and must be completed and certified by the owner or manager of the mobile home park in which the applicant resides.

Applicants must meet residency and income requirements to be eligible for the program. The income limits for 1998 and 1999 are:

1998 — less than \$17,918 if you are single, or \$21,970 (combined income) if married, and

1999 — less than \$18,151 if you are single, or \$22,256 (combined income) if married.

Applicants who are also entitled to homestead rebates must file a separate Homestead Rebate Application (Form HR-1040) to receive a homestead rebate.

To order forms or ask questions related to the program call the Property Tax Reimbursement Hotline at 1-800-882-6597. Division representatives are available from 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays).

□

Tax Preparer ID Numbers

As a result of a 1998 amendment to the Federal Internal Revenue Code, the IRS now allows tax preparers to apply for a Federal “preparer tax identification number.”

As a result of the recent changes, a tax preparer may use either his or her social security number or Federal preparer tax identification number on clients’ Federal returns and refund claims. For purposes of filing New Jersey State returns or refund claims, tax preparers may use either their social security or Federal preparer tax identification number, as long as the preparer uses the same number for the State filings as used for the Federal filings. □

GROSS INCOME TAX

NJ-1040 Filing Tips

Where’s my refund? Why did you send me this bill? Where’s my Homestead Rebate? These are the questions most frequently asked by anxious taxpayers who call or write to the Division of Taxation.

The following are some important tips for taxpayers and practitioners for filing 1999 New Jersey gross income tax returns. Of course, the best way to ensure an accurate return and a quick refund is to use one of New Jersey’s “paperless” filing methods: NJ PC File, NJ TeleFile or NJ E-File.

Whichever filing method you choose, here are some reminders that will prevent delays in receiving refunds and homestead rebates, and eliminate the issuance of erroneous bills, all of which cause otherwise unnecessary calls and letters to the Division.

- Be sure to use a **1999** return; there are certain changes on the

form that apply specifically to the 1999 return year.

- Read the instruction booklet before completing the return.
- Be sure to use the **State Wages** figure from W-2s and not the Federal wages. In many cases they will be different.
- When calculating your **Property Tax Deduction**, be sure to use only 18% of the annual amount of rent you paid if you are a tenant. Property owners can claim the actual amount of property tax paid or \$10,000, whichever is less. If you claim the **Property Tax Credit**, the amount will be \$50 (\$25 if married filing a separate return).
- Check your math.
- Make sure all required lines are completed on the return.

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Interest Rates

Fourth Qtr. '99 — 10.75%

First Qtr. '00 — 11.50%

The interest rate assessed on amounts due for the fourth quarter of 1999 is 10.75%, and the interest rate for the first quarter of 2000 is 11.50%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
4/1/98	11.50%
7/1/98	11.50%
10/1/98	11.50%
1/1/99	10.75%
4/1/99	10.75%
7/1/99	10.75%
10/1/99	10.75%
1/1/00	11.50%

nj-1040 filing tips – from page 4

- If you use the Tax Tables to compute your tax due, be sure to use the correct column based upon your filing status.
- If your taxable income is \$100,000 or more and you use the Tax Rate Schedules to compute the tax due, remember to complete Step 3 on either Table A or Table B in the schedule.
- Be sure to use the correct label on the return if there are multiple filers in the same household.
- Be sure to complete page 3 of the return if you are requesting a refund or credit forward.
- Check to see that your return is signed and dated.
- Be sure that W-2s are legible.
- Review all of your payment records before preparing your return, so that you may properly take credit for all estimated payments, payments made with requests for extension, and credits forward from the prior year.
- When taking credit for taxes paid to other jurisdictions, be sure to include a copy of the tax return that you filed with the other state or taxing jurisdiction.
- When reporting business income, be sure to include a copy of the Federal **Schedule C, C-EZ, or F**.
- Be sure to include **Schedule NJ-K-1, Form NJ-1065** (or a copy of Federal Schedule K-1, Form 1065) when reporting partnership income.
- When reporting S Corporation income, be sure to include **Schedule NJ-K-1, Form CBT-100S** (or a copy of Federal Schedule K-1, Form 1120S).

- Be sure to attach **Schedule NJ-2450** when claiming excess UI/HC/WD and disability contributions.
- When preparing your payment voucher, be sure to write your social security number on your check. On joint returns, write the primary social security number of the return on the check.
- Remember to complete the Homestead Rebate Application if you are eligible for a rebate.
- Since New Jersey estimated payments are due on the same dates as Federal estimated payments, be sure to mail your New Jersey payment and NJ-1040-ES to New Jersey, and your Federal payment and 1040-ES to the IRS.

Following these guidelines will help to ensure that your return is processed timely and accurately, your payments, withholdings and credits properly applied, your refund and/or rebate received timely, and the chances of you receiving an unexpected bill, significantly reduced. □

GROSS INCOME TAX ***NJ Information on Form W-2***

Employers must furnish a Wage and Tax Statement (Form W-2) to each employee showing the amount of wages paid, the amount of state income tax withheld, the name of the state where the tax was remitted and certain other information. New Jersey does not have a separate form for reporting these wage and tax figures. They are reported on Federal Form W-2 in the boxes provided for state tax information. Report information on

the W-2 for employees working in New Jersey as follows:

- ♦ **Box 14** — Report amounts withheld as employee contributions to New Jersey Unemployment Insurance/Health Care Subsidy Fund/Workforce Development Partnership Fund (UI/HC/WD) and Disability Insurance (DI). These amounts must be reported separately. Employers with approved private disability plans must also include their assigned private plan number in this box. New Jersey employers no longer have a separate identification number issued by the Department of Labor, except for those employers with private disability plans.
- ♦ **Box 16** — In most cases, New Jersey income tax is withheld from the salaries of employees working in this State. When taxes have been withheld and remitted to New Jersey, indicate “NJ” in the area of Box 16 designated as “State.” List your New Jersey Taxpayer Identification Number in the area of Box 16 designated as “Employer’s state ID no.” This number is based on your Federal Employer Identification Number (FEIN) and is located on your New Jersey Employer’s Quarterly Report (Form NJ-927 or NJ-927-W), above your pre-printed name and address. If you are unsure of your New Jersey registration number, contact the Division of Taxation Call Center at 609-292-6400 or the Division of Employer Accounts Hotline at 609-633-6400.

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information on w-2 – from pg. 5

♦ **Box 17** — Report all salaries, wages, tips, fees, commissions, bonuses, and other remuneration subject to New Jersey Gross Income Tax.

♦ **Box 18** — Report the amount of New Jersey income tax withheld.

For more information on completing Form W-2, request a New Jersey Gross Income Tax Instructions for Employers booklet (Form NJ-WT), or Tax Topic Bulletin MISC-1, *Employer Responsibilities*.



CORPORATION TAX

Child Care Credit

On May 6, 1999 Assembly Bill No. 1669 (3R) was signed into law as Chapter 102, P.L. 1999 by Governor Whitman. The law provides a new corporation business tax credit under the Neighborhood and Business Child Care Tax Incentive Program.

A corporation that is a member of a small/medium business child care consortium for the three year demonstration program would be allowed a credit equal to 15% of the corporation's expenditures for child care center physical plant or facilities owned or operated by the consortium or by a contracted sponsoring organization during the demonstration period.

A corporation is also allowed a credit equal to 10% of its contributions during a privilege period, whether in cash or in kind, to a sponsor of a neighborhood-based child care center that was awarded a program grant.

In order to take advantage of the credit, corporations must request Form 309 from the Division's Taxpayer Forms Services and file it with the corporation business tax return filed.

The allowable total Neighborhood and Business Child Care Tax Credit in addition to the amount of all other credits taken is limited to 50% of the taxpayer's total tax liability and can not reduce the total tax liability below the statutory minimum. The credit does not

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Sample W-2 (This form is for illustration only and is not reproducible.)

a Control number		22222		Void		For Official Use Only OMB No. 1545-0008	
b Employer identification number				1 Wages, tips, other compensation		Federal income tax withheld	
c Employer's name, address, and ZIP code				3 Social security wages		Social security tax withheld	
				5 Medicare wages and tips		Medicare tax withheld	
				Allocated tips			
d Employee's social security number				9 Advance earned income credit		Child care benefits	
e Employee's name (first, middle initial, last)				11 Nonqualified plan		12 Benefits included in box 1	
				13 See instructions for box 13		14 Other	
						UI/HC/WD 85.85 DI 101.00 DI PP. #(Private Plan No.)	
f Employee's address and ZIP code				15 Statutory employee <input type="checkbox"/>		Deceased <input type="checkbox"/>	
				Pension plan <input type="checkbox"/>		Legal rep. <input type="checkbox"/>	
				Deferred compensation <input type="checkbox"/>			
16 State	Employer's state I.D. no.	17 State wages, tips, etc.	18 State income tax	19 Locality name	20 Local wages, tips, etc.	21 Local income tax	

VOID

V

Form

W-2

Wage and Tax Statement

1999

Department of the Treasury—Internal Revenue Service
For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

child care credit – from page 6

contain any credit carryover provisions. Any credit in excess of the allowable amount is forfeited.

The credit applies to privilege periods ending on or after July 31, 1999 and before July 1, 2002. □

GROSS INCOME TAX **Undistributed** **Trust Income**

The fiduciary of every resident trust is required to file a New Jersey Gross Income Tax Fiduciary Return (Form NJ-1041) if gross income is more than \$10,000 during the taxable year. For tax years 1994 through 1998 the filing threshold amount was \$7,500; for tax years 1993 and before, \$3,000.

The fiduciary of every nonresident trust which derives income from New Jersey sources must file an NJ-1041 if the gross income received from all sources (both inside and outside New Jersey) during the taxable year is more than \$10,000.

Recently, a trust administrator inquired about the filing requirements of a trust when the trust, created in New Jersey by the will of a New Jersey domiciliary, is not administered in New Jersey. The trustees, the trust assets and the beneficiaries are not located in New Jersey.

In two 1983 New Jersey Tax Court cases the facts are consistent with those in the inquiry and both times the Court decided that there was insufficient tax nexus for the trust to be taxed on its undistributed income.

In *Robert M. Pennoyer v. Director, Division of Taxation* it was held

that undistributed income of a testamentary trust created by the will of a New Jersey domiciliary did not have sufficient nexus for taxation in New Jersey where the trustee, beneficiaries and assets of the trust are all located outside New Jersey.

In *Robert S. Potter v. Director, Division of Taxation* it was held that undistributed income of an irrevocable inter vivos trust created by a New Jersey domiciliary was not subject to the New Jersey tax where the trustee, beneficiaries and assets were all located outside New Jersey.

The Tax Court in *Potter* did state that even though New Jersey resident beneficiaries were subject to tax on trust income distributed to them or on undistributed income over which they had control, that fact was not a sufficient reason to tax the trust on undistributed trust income.

The Division has interpreted the Tax Court decisions to mean that if all trust assets and all trustees are located outside New Jersey the trust is not subject to tax on its undistributed income.

Trustees unsure of their responsibilities for filing New Jersey gross income tax fiduciary returns should write to the Division of Taxation at the following address, giving detailed information about the trust:

NJ DIVISION OF TAXATION
INDIVIDUAL TAX AUDIT BRANCH
PO BOX 288
TRENTON NEW JERSEY 08695-0288
□

Volunteers **Provide Assistance**

The Division of Taxation is proud to be continuing its long association with the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs. These programs train hundreds of volunteer tax preparers who fill out tax forms at no charge for tens of thousands of individuals at hundreds of sites throughout the State.

The Division familiarizes volunteers in both programs with the important aspects of the New Jersey Gross Income Tax/Homestead Rebate and the new Property Tax Reimbursement program so they may assist senior and low-income New Jersey taxpayers complete their returns. □

Domestic Employer **Tax Reporting**

Effective January 1, 2000, employers of household workers may report and remit gross income tax withholding and unemployment and disability insurance on an annual basis. Form NJ-927H (Employer Annual Report) will be mailed to all domestic employers the last week of December to be completed and returned by the due date of January 31, 2001.

This change in reporting pertains only to gross income tax withholding and unemployment and disability insurance. All employers are still required to file the Employer Report of Wages Paid (Form WR-30) on a quarterly basis.

Questions regarding unemployment and disability insurance

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employer reporting – from pg. 7

contributions or Form WR-30 should be directed to (609) 633-6400. Questions regarding gross income tax withholding should be directed to (609) 292-6400. □

One-Stop Business Registration Service

New Jersey Department of the Treasury is now offering a unique one-stop service for businesses that wish to form New Jersey corporations. The new service will streamline the business formation process and enable corporations to begin operations on a more timely basis without the need to contact and file papers with multiple State and Federal offices.

Administered by the Division of Revenue's Business Services Branch, the new service will enable businesses to obtain all of the following after a single visit to the service center located at 225 West State Street, Trenton, New Jersey:

- Certificate of Incorporation – This is the legal document needed to establish new corporations.
- Federal Employer Identification Number (FEIN) – This tax identification number will be assigned through an innovative pilot project offered under the auspices of the Internal Revenue Service and New Jersey Division of Revenue.
- New Jersey Tax/Employer Registration – In addition to obtaining FEINs directly from the State, service center customers will be able to register on-site for all applicable taxes and employer contributions (for unemployment and disability).

For more information about the one-stop service center and the Division of Revenue's commercial recording and business service programs, call 609-292-9292 or visit the Division's business gateway Web site at:

www.state.nj.us/njbgs □

Warrants Filed Electronically

As a result of the continued support of the Office of Information Technology and with the cooperation of the technical support group for the Clerk of the Superior Court, in October 1999, the Division of Taxation began processing its Warrants for Satisfaction of Judgments electronically with the Superior Court of New Jersey. This process involves the Division's passing certain electronic information to the Office of the Courts which will update the Court's records before returning electronic information to the Division confirming that this update took place. This process is being run on a weekly basis. This new process significantly decreases delays in the satisfaction of these judgments and allows the Division to provide better customer service to the affected taxpayers.

Previously, the Division of Taxation would timely produce hard copies of the Warrant for Satisfaction and forward same to the Clerk

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NJ TeleFile The fastest way to file!

File your NJ taxes by Touch-tone telephone. If you meet the following conditions, you may qualify to TeleFile your 1999 income tax return/homestead rebate application. To TeleFile, call 1-888-235-FILE (from within New Jersey only) or 609-826-4448 (from anywhere).

Full year New Jersey resident during 1999

Not 65 years of age or older as of December 31, 1999

Same filing status as on your 1998 NJ return

Not blind or disabled as of December 31, 1999

Total New Jersey income of \$150,000 or less

Only income from wages, interest (\$1,000 or less) and/or dividends (\$1,000 or less)

warrants – from page 8

for recording. Once recorded, the Court would in turn furnish the Division with a confirmed copy for its files and/or for the dissemination to the taxpayer and/or his representatives. It was not unusual for a period of four to six weeks to go by before the confirmed copy was returned to the Division, resulting in delays for taxpayers who were awaiting the completion of certain financial transactions. These taxpayers would in turn contact Division personnel complaining about these long delays although the Division had no control over this process.

In the past, the Division as a courtesy to the taxpayer, would, upon request, provide them with a confirmed copy of the Satisfaction for their records. Since the Division of Taxation is no longer receiving confirmed copies of any Satisfactions, the taxpayer will have to contact the Office of the Clerk of the Superior Court of New Jersey, in Trenton, at 609-292-4804, for a true copy of the Satisfaction. The Division will continue to produce a *facsimile* of the Satisfaction for any taxpayer requesting one, however, those taxpayers requiring a *certified copy* must contact the Court. □

SALES AND USE TAX ***Motor Vehicle Leases***

Under New Jersey law, the lessor of tangible personal property is considered to be the end user of the property and is required to pay use tax directly to the Division of Taxation. In addition, a lessor having leased tangible personal property present in New Jersey is deemed to have a place of business in this State and is thereby required

to register with the State of New Jersey and remit any required taxes.

The New Jersey Sales and Use Tax Act makes a distinction between rentals and leases. Although both are agreements for the temporary possession and/or use of tangible personal property, a rental is a short-term transaction lasting 28 days or less. A lease has a term of more than 28 days.

Leases are treated differently than rentals for sales tax purposes. Under the law, the renting entity is required to collect the sales tax from the renter and remit it to the State. For leases, the lessor is required to pay the use tax but may recoup this tax from the lessee as a cost of the lease. These monies must be paid in their entirety with the next month's remittance after the lease is signed. The tax may be calculated in one of the following ways:

- 1) On the original purchase price — the purchase price of the vehicle less a separately stated charge for transportation to the dealer's place of business; or
- 2) On the total lease payments — the total of the lease payments attributable to the property, less the total interest service charge of the financial institution and/or the amount of the customer's trade deficit paid off through the lease.

The motor vehicle dealer is considered the lessor when he has the title to the motor vehicle and executes a lease agreement. The dealer is still the lessor required to remit the use tax if he executes the lease agreement and only the name of the finance company appears on the lease agreement and the

finance company has the right to approve or deny the lease.

The early cancellation of the lease or the transferring of the vehicle out of State prior to the expiration of the lease is not a basis for the refunding of any portion of the tax. As to the tax imposed on the balance of the lease, the laws of that state will apply. In addition, if a vehicle is brought into the State the lessor must be registered with the State as any other lessor and would owe use tax on the remainder of the lease.

Any leased vehicle requiring title work by the Department of Motor Vehicles, other than renewals, must have, among other things, the back of the title or Manufacturer's Certificate of Origin stamped with a NJ Sales Tax Satisfied stamp correctly completed. This stamp certifies to D.M.V. that the taxes are being remitted correctly. Leased vehicles without this stamp completed correctly will not be able to be registered or titled. □

SALES AND USE TAX ***Computer Systems***

Everyone has heard about the potential computer problems involving the year 2000 (Y2K). In addition, the beginning of any new year can be a trying time for many businesses and tax professionals since it is also the beginning of "tax season."

If a new computer system is purchased, it is taxable. Many people buy computers through catalogues from an out-of-State vendor who is not registered with the Division of Taxation in New Jersey. In such cases sales tax may

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not be charged on the purchase price. When this occurs, the purchaser *must* report and remit the amount of tax due as use tax using one of the following forms:

1. **Businesses** – If the purchaser is a business, the amount of use tax due must be included on Line 5 of the quarterly sales and use tax return, Form ST-50.
2. **Individuals** – Individual taxpayers report use tax due on either a Use Tax Return, Form ST-18, or on the use tax line of the New Jersey gross income tax return, Form NJ-1040.

Upgrading an existing computer system is also taxable. Purchasing hardware for additional memory, drivers or boards is considered purchasing tangible personal property. The fee for installing and repairing this hardware is also taxable since the technician is servicing or repairing personal property.

Software purchased for your computer is taxable. However, if the software has been specifically adapted to fulfill a customer's needs, it is exempt from sales tax. If a word processing program is purchased "off the shelf" it is taxable. If a software package is purchased that has been developed for one customer to meet specific needs, it is exempt from sales tax.

Computer-related services such as consulting services, technical instruction or programming are considered professional services and are not subject to sales tax. A taxable service is the sale of addressed labels or additional copies of records and reports which are prepared by rerunning the original program. □

LOCAL PROPERTY TAX ***F.E.A.C. Values***

The Farmland Assessment Act of 1964 (Chapter 48, Laws of 1964) created a State Farmland Evaluation Advisory Committee and designated as the members thereof the Director of the Division of Taxation, the Dean of Cook College and the Secretary of Agriculture. The Act prescribed the functions and responsibilities of the Committee as follows:

"...The Committee shall meet from time to time on the call of the Secretary of Agriculture and annually determine and publish a range of values for each of the several classifications of land in agricultural or horticultural use in the various areas of the State. The primary objective of the Committee shall be the determination of the ranges in fair value of such land based upon its productive capabilities when devoted to agricultural or horticultural uses. In making these annual determinations of values, the Committee shall consider available evidence of agricultural or horticultural capability derived from the soil survey at Rutgers–The State University, the National Cooperative Soil Survey, and such other evidence of value of land devoted exclusively to agricultural or horticultural uses as it may in its judgment deem pertinent. On or before October 1 of each year, the Committee shall make these ranges of fair value available to the assessing authority in each of the taxing districts in which land in agricultural or horticultural use is located."

The methodology of capitalizing net farm income per acre in determining the ranges in fair value of the several classifications of qualified land has been continued in this

report. However, the Committee decided to readopt the ranges of value of the prior year after considering the drought of 1999. Net farm income for 1999 (an important component in estimating farmland values) is not available until a year following production and sales. Knowing the drought will negatively affect net farm income in 1999, but not the extent, the Committee was reluctant to change values in a year of one of the most severe droughts on record. Accordingly, the Committee decided that holding values stable in its adoption this year would be an appropriate policy until more complete information becomes available in the ensuing year. □

LOCAL PROPERTY TAX ***Farmland Acreage***

A report summarizing data from farmland assessment applications (FA-1) has recently been completed. The study shows that total acreage devoted to agricultural or horticultural use in 1999 was 1,164,951 acres for the entire state.

The data for tax year 1999 reflects a continued decline in the amount of qualified farmland since enactment of Chapter 48, Laws of 1964 (the "Farmland Assessment Act"). Since 1983, the year in which the highest acreage, 1,271,882 acres, qualified for farmland assessment, the amount of qualified acreage has declined 8.4% or a total of 106,932 acres.

24.2% of New Jersey's land mass is approved under the Farmland Assessment Act. Hudson County remains the only county without farmland. Essex and Union each report less than 500 acres devoted

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farmland acreage – from page 10

to agricultural or horticultural use. Conversely, Salem with 55.6% has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Warren 50.5%; Hunterdon 50.2%; Gloucester 38%; Sussex 33.7% and Mercer 29%.

Copies of the 1999 report have been distributed to the County Tax Board Administrators. Anyone seeking specific information on qualified farmland acreage or wishing to obtain a copy of the report may do so by calling 609-292-7974. □

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LOCAL PROPERTY TAX Tax Deductions Certified

The 1999 State Revenue Sharing Act Distribution for senior and disabled citizens, surviving spouses and veterans was delivered to the State Treasurer on September 15, 1999.

Under the provisions of R.S. 54A:10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 1999.

The total amount of property tax deductions for senior and disabled citizens and surviving spouses for 1999 was \$31,638,337. That amount represents a decrease of 6% from 1998.

The total number of property tax deductions for senior and disabled citizens and surviving spouses for 1999 was 121,168. When compared to tax year 1998 the number of deductions decreased 6.8%.

The amount of veterans' deductions for 1999 was \$17,043,098. That amount represents a decrease of 2.8% from 1998.

The total number of veterans' deductions for 1999 was 334,193. When compared to tax year 1998 the number of deductions decreased 2.8%.

The total amount of property tax deductions and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of c.30, P.L. 1997. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

January 1–

- Duplicate of tax map approved previous year filed with the County Clerk or County Register of Deeds by taxing district.
- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to County Tax Administrator by assessor.

January 10–

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.
- Copy of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.

February 1–

- Notices of current assessment and preceding year's taxes mailed to taxpayer by assessor.

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assessors' calendar – from pg. 11

- Appeal time, where assessor fails to notify taxpayer of current assessment and preceding year's taxes, or change in assessment, extended by County Tax Board.
- MOD IV Master file sent to Property Administration via magnetic tape.
- Assessors' office hours furnished to Director, Division of Taxation by County Tax Administrator.

February 15–

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

March 1–

- Post-Tax Year Statement, PD5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board, each assessor, Division of Taxation, and post a copy at the courthouse.

March 10 (before)–

- Equalization table hearings completed by County Tax Board.

March 10–

- Confirmed equalization table sent by County Tax Board to each taxing district in the county, to Director, Taxation, and to Tax Court. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On June 23, 1999, Richard A. Spair, a former investigator for the Mercer County Prosecutor's Office, plead guilty to stealing and selling computer equipment belonging to the county, defrauding customers by taking deposit monies and not delivering the ordered computer equipment and filing a false and fraudulent 1995 New Jersey gross income tax return. Under the terms of the plea agreement, Mr. Spair faces 180 days in jail, five years of probation, restitution of \$79,232.15, payment of \$6,600 of New Jersey gross income tax and forfeiture of all public employment in New Jersey for life. Sentencing was set for September 10, 1999.
- On July 9, 1999, the State grand jury returned an eight (8) count indictment against Natasha, Inc. for the nonpayment of collected motor fuels seller-user tax in the amount of \$126,413. Charges identified in the indictment included theft of entrusted funds; misconduct by corporate official(s); and failure to file State tax returns.
- On July 14, 1999, Jeffrey A. Tyson, a former resident of Plainsboro, New Jersey, was entered into a Pre-Trial Intervention (PTI) Program for first time offenders. Mr. Tyson had been indicted for failure to file New Jersey gross income tax returns for the years 1993 through 1996, and failure to pay in excess of \$4,000 in New Jersey gross income tax for those years. Mr. Tyson had cited con-

stitutional issues relating to his requirement to file tax returns. Mr. Tyson stated that the offenses arose because of his "gullibility" in believing the rhetoric espoused by others. He agreed to make restitution of an amount in excess of \$8,500 in taxes, penalties and interest on a monthly basis during his three year period of supervision.

- During the July 1999 session of the Middlesex County grand jury, all three subjects arrested by Special Agents of the Office of Criminal Investigation in March 1999, during the execution of a search warrant in Perth Amboy, New Jersey, were indicted. The subjects, Antonio Oviedo, Norberto Espinal from Brooklyn, New York, and Carlos Lopez from Perth Amboy, New Jersey, were indicted on possession of counterfeit tax stamps and possession of cigarettes bearing counterfeit stamps, both crimes of the 3rd degree. Both Espinal and Oviedo have prior arrests for the same activity in New York State.
- On August 2, 1999, Meyer Shevrin, a resident of Manalapan, New Jersey entered a guilty plea to one count of theft by failure to make required disposition of property received. Mr. Shevrin had operated the now defunct computer sales business known as World Sales, Inc. in Freehold, New Jersey, and failed to file sales tax returns and remit the sales tax monies that he had collected from customers on behalf of the State of New Jersey. As a term of the plea, Mr. Shevrin will make

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criminal enforcement – from page 12

restitution of approximately \$44,000 before he is sentenced on October 29, 1999.

- On August 13, 1999, Peter Anagnostis of Philadelphia, Pennsylvania, was sentenced to four years in State prison for failing to remit collected sales tax in the amount of \$262,537. The sentence was handed down by Camden County Superior Court Judge John McNeill, who ordered full restitution. This joint investigation with the New Jersey State Police ABC Enforcement Unit and the Office of Criminal Investigation had determined that the theft of the entrusted sales tax monies had occurred between July 1, 1990 and June 30, 1994 from a liquor store in Cherry Hill, New Jersey, Anagnostis Inc., trading as Holiday Spirits. Mr. Anagnostis was originally indicted by a State grand jury on August 7, 1998. He was arrested on October 20, 1998 by members of the Philadelphia Police Department in response to an arrest warrant that was issued due to his failing to respond to official notices of his

indictment by the grand jury. Mr. Anagnostis was extradited to New Jersey on January 13, 1999 in response to a Governor's arrest warrant. Judge McNeill ordered that Mr. Anagnostis be given credit for time served while incarcerated in the Philadelphia and Camden County jails, which was October 20, 1998 through August 12, 1999.

- On August 24, 1999, Ahmad Chikha, trading as 7-11 Grocery Store, Paterson, New Jersey, was found guilty in Paterson Municipal Court for possession of contraband cigarettes and failure to obtain a current retail over-the-counter cigarette license. The Court imposed a total of \$810 in court costs, fees, and fines.
- On September 15, 1999, S&B Retailer Inc. of Hi-Nella, New Jersey, was charged with Possession of 55.4 cartons of contraband cigarettes both Pennsylvania and Delaware State stamped. Additional charges relative to no consumer license, no invoices, and failure to register for the wholesale tobacco products sales and use tax have

been filed as well. A number of cigars were also retained as evidence of possession of untaxed goods. This case is the result of a cooperative investigation between New Jersey State Police ABCEB-Bellmawr station and the Office of Criminal Investigation.

- On September 17, 1999, Jaroslaw Biegaj of Brick Township, New Jersey, was found guilty in the Lakewood Municipal Court of transportation of contraband cigarettes. The Judge imposed a total of \$1,155 in court costs, fees and fines.
- Sixty-seven charges were filed in municipal court on eight cases for violating the cigarette tax law including possession of 854.5 cartons of contraband cigarettes, valued at \$28,071.58. □

Enforcement Summary Statistics

Third Quarter 1999

Following is a summary of enforcement actions for the quarter ending September 30, 1998.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	2,017	• Seizures	34
Total Amount	\$51,678,810	• Auctions	5
• Jeopardy Assessments	160	• Referrals to the Attorney General's Office	310

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

Tax Briefs

**Corporation Business Tax
Manufacturing Equipment and
Employment Investment Credit -
Form 305** — The following
examples supply guidance about
the operation of this tax credit.

Example 1

A single corporation owns plants in several states. When equipment is needed in one location, for example, the company may transfer an item from an out-of-State facility for use in the New Jersey plant.

The definition of “Qualified Equipment” refers to placing the equipment in service in this State. N.J.S.A. 54:10A-5.17. The Administrative Code, N.J.A.C. 18:7-3.21, provides in part that equipment is placed in service when the property is “placed in a condition or state of readiness and availability for a specifically assigned function.”

Accordingly, if a corporation moves equipment that otherwise would qualify for the credit from a location outside the State to a location within the State, such equipment would be eligible for the credit. Depreciation, having started when the property was originally placed in service outside the State, would continue. The equipment is not disqualified from the credit by depreciation not starting in New Jersey.

Example 2

To distinguish between seasonal and more established part-time employees, the statute defines the term part-time employee to mean “an employee working for the taxpayer for at least 20 hours per week for at least six months during the tax year.” N.J.S.A. 54:10A-5.17.

In determining the number of employees in an environment where there is a great deal of turnover, the following method should be used. A full-time employee works 140 hours per month and is on permanent status. Since a part-time employee is required to work six months, the Division audit staff is not able to give credit for full-time employment that is less than the part-time standard. Therefore, to be considered as a full-time employee, credit cannot be given if “full-time” employees are working for less than six months, the part-time requirement.

Thus, to determine the number of full-time employees, add the hours worked by full-time employees that have been employed for six months or more, then divide the total by 1680, the number of hours a full-time worker would work in a year. The intention of the law is to give a credit for increases in the number of employees that are brought on and are kept employed.

Gross Income Tax

Treatment of Theft of Trust Fund Taxes — New Jersey gross income includes “Income, gain or profit derived from acts or omissions defined as crimes or offenses under the laws of...[New Jersey] or any other jurisdiction.” N.J.S.A. 54A:5-1.o. A vendor who collects sales tax but who keeps the tax, knowing that it should be paid over to the Division, may be in violation of N.J.S.A. 2C:21-15, which establishes sanctions for improperly disposing of entrusted property or property belonging to the State of New Jersey. Keeping the tax in those circumstances could constitute an “act [] or omission [],” defined as a violation of law in New Jersey law. Accordingly, the amount of the

sales tax kept by the vendor can be considered income for purposes of the New Jersey Gross Income Tax Act.

Severance Payments — New Jersey gross income includes “Salaries, wages,...and other remuneration received for services...” N.J.S.A. 54A:5-1.a. However, “damages received, whether by suit or agreement, on account of personal injuries or sickness” are excluded from gross income. N.J.S.A. 54A:6-6.b. An employee, laid-off as part of downsizing of the employer, who receives payments based upon years of service and salary is deemed to have received a salary, wage or other remuneration. That principle applies, even if, in exchange for the payment, the employee signs a General Release and Covenant Not to Sue in favor of the employer that does not arise out of a specific injury suffered by the employee. The release, and generalized employer concern about potential litigation does not make the payment “damages received...on account of personal injuries or sickness.”

Petitions for Refund — No petition for refund is permitted after a petition for redetermination of a deficiency is made pursuant to N.J.S.A. 54A:9-9(b).

N.J.S.A. 54A:9-9(c) establishes that a petition for refund of Gross Income Tax can be made if:

1. The claim is timely;
2. The taxpayer has not previously filed a petition with the Director under subsection (b) for the same claim;

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3. Six months have expired since the claim was filed or a whole or partial denial was mailed to the taxpayer.

Recently, the Conference and Appeals Branch has been receiving refund claims relative to previously decided and paid protests for the same claim. The taxpayers did not appeal the previous redetermination to the Tax Court of New Jersey as provided for under N.J.S.A. 54A:9-10(a). Therefore, amended returns seeking refunds under these circumstances will be denied based on §9(c)(2) above.

Sale of Debtor's Residence by Bankruptcy Trustee —

The Division of Taxation will follow the decision of the United States Bankruptcy Court in *In re Didario*, 232 B.R. 311 (Bankr. N.J. 1999), which held that the gain from a sale of an individual Chapter 7 debtor's principal residence by the bankruptcy trustee may be excluded from the estate's Federal gross income pursuant to 26 U.S.C.A. Sec. 121. The Court noted that pursuant to 26 U.S.C.A. Sec. 1398(g), the estate succeeded to the debtor's tax attributes, and reasoned that the Sec. 121 exclusion was a tax attribute.

For New Jersey Gross Income Tax purposes a taxpayer may elect to exclude from gross income the gain realized on the sale of a qualifying principal residence. N.J.S.A. 54A:6-9.1. The Federal Bankruptcy Code provides that the bankruptcy estate of an individual Chapter 7 debtor succeeds to the debtor's state tax attributes. 11 U.S.C.A. Sec. 346(g)(2) and (i)(1). As the New Jersey statute was intended to correlate with the Federal law, the two provisions should be interpreted consistently. Accordingly, the trustee of the estate of an individual Chapter 7 debtor may utilize N.J.S.A. 54A:6-9, to the extent its requirements are met.

Sales & Use Tax

Internet Nexus — A corporation whose physical presence or economic activities are sufficient to give it nexus with New Jersey for sales and use tax purposes is required to collect New Jersey sales and use tax on sales of taxable items delivered to a New Jersey address unless the purchaser claims a valid statutory exemption.

The Internet Tax Freedom Act was intended to prevent states from imposing *new* taxes that are specifically *aimed* at Internet-related activities. The Federal government deemed the

moratorium necessary in order to minimize the possibility of multiple and inconsistent taxation by more than one state or local jurisdiction and to prevent the imposition of discriminatory taxes that would burden Internet-related transactions more than non-Internet transactions. The Act does not prevent states from enforcing existing taxes. It would, however, prevent the imposition of a new tax on charges for access to the Internet. The Act was clearly not intended to turn Internet commerce into a tax-free zone, where otherwise taxable transactions, e.g., the purchase of books, toys or cameras delivered to New Jersey, would become exempt simply because they were ordered and paid for over the Internet instead of by mail or phone or in-person shopping.

Parent-Teacher Association Purchases and Sales —

The Division of Taxation received an inquiry regarding the Division's position on the sales tax consequences of purchases and sales by parent-teacher associations in New Jersey.

Generally, an organization holding a valid New Jersey sales and use tax exempt organization permit may make tax exempt purchases in New Jersey by issuing to the vendor a copy of its ST-5 Exempt Organization Certificate and making payment from the funds of the organization.

A New Jersey public school PTA (or any other exempt organization) holding a valid exempt organization permit may issue an ST-5 to its vendor when making purchases for occasional fundraising sales, whether the articles are purchased for resale or taken on consignment.

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The purchase must be made with a PTA check.

When conducting occasional fund-raiser sales, the PTA or any of its agents, whether they are members, students, parents, etc., may sell the items on behalf of the PTA or public school without collecting tax if payment is by cash or checks payable to the PTA.

If a PTA operates a school store on a daily, weekly or continuous basis, it must collect sales tax on taxable sales. In this case, the PTA must request that the Division of Revenue put them on a reporting basis so they can receive sales tax returns and properly remit sales tax. The PTA would issue an ST-3 Resale Certificate to its supplier to exempt store inventory purchases. There is no threshold amount of sales below which sales tax would not apply.

Scan Card Discount Program —

The Division received an inquiry regarding the sales and use tax treatment of certain discounts offered to customers by a vendor who participates in various “vendor allowance” programs. In these situations, a vendor has contractual arrangements with some merchandise suppliers whereby the vendor agrees to provide the suppliers with

certain promotional and advertising services in exchange for various vendor allowances, e.g., reduced prices charged on a product for a limited time, partial refunds for products already delivered and billed, permanent price reductions on an item, payments to the vendor for featuring the supplier’s products in the vendor’s promotional material, and payments to the vendor based on the volume of the supplier’s merchandise sold. By the terms of these contracts, the vendor is not obligated to pass these monetary benefits on to its customers; it is free to retain the allowances as additional profit.

The vendor in this case decided to offer product discounts to customers who participate in a promotional program that involves the use of scan cards. Customers who present the card receive a discount on certain products chosen by the vendor. Some or all of the discounted products may be supplied by companies that have given the “vendor allowance” in exchange for its promotional services.

Based on the above facts, the discount connected with customer’s use of the scan card will be treated as a vendor discount from the regular sale price to a consumer. The vendor allowance will not be deemed to be part of the vendor’s “receipt” for the retail sale of a specific item to a specific customer. See N.J.S.A. 54:32B-2(d); N.J.A.C. 18:24-1.4(h). Sales tax should therefore be charged on the price charged *after* deducting the vendor’s discount provided through use of the scan card. □

In Our Courts

Administration

Subject Matter Jurisdiction — *Delta Data Net, Inc., v. Director Division of Taxation*, decided July 23, 1999; Tax Court; No. 00661-1999.

The Division sent the notice of assessment related to final audit determination for sales and use tax and corporation business tax (hereinafter “notice”) dated September 3, 1998 by certified mail and addressed to plaintiff’s address on September 2, 1998. The certified mail receipt indicates that plaintiff received the notice on September 4, 1998 as evidenced by the signature of plaintiff’s employee. By letter dated January 15, 1999, plaintiff protested and requested a conference that was denied by the Division’s February 5, 1999 letter for failure to file a protest within the 90-day period for the September 3, 1998 notice.

Pursuant to the Division’s motion to dismiss the complaint, plaintiff claimed that the complaint should be heard because (1) the letter was dated September 3 and mailed on September 2 which indicates it is not the same letter, (2) the certified receipt number was not put on the September 3 letter and that casts doubt as to whether it is the same letter, (3) the letter was not addressed to someone like the company’s CFO who had attended meetings with the Division concerning the audit at issue, (4) their June meeting with the Division was in the nature of a protest as they told the Division there were documents they needed to locate that would demonstrate that the tax was not owed, and (5) plaintiff is a zealous taxpayer that never would

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have ignored the notice.

The Court dismissed plaintiff's complaint due to lack of subject matter jurisdiction. The Court found that the September 3, 1998 notice of assessment was properly addressed, sent by certified mail to plaintiff, and received by plaintiff's employee. N.J.S.A. 54:49-19 provides that challenges to the notice of assessment must be filed within 90 days of the date of the notice. Therefore, the Court ruled that plaintiff did not timely file its protest with the Division because plaintiff did not file a written protest within this 90-day period. Furthermore, the Court stated that:

"It is not the problem of the director, and again, even putting the strongest responsibility on the director to turn square corners, it is not the problem or obligation of the director to hand deliver that letter, to have knocked on the door and said, Mr. Devito, here we are with something, it's really important and you need to look at it."

Subject Matter Jurisdiction – *Dundee Automotive, Inc., v. Director Division of Taxation*, decided July 30, 1999; Tax Court; No. 002143-99.

Plaintiff's complaint was timely received by the Tax Court Management Office (hereinafter "office") on the 89th day after the date of the Division's Final Determination; however, the filing fee was not included. The office stamped the complaint "Received but not Filed" and permitted plaintiff ten days to remit the filing fee in order for the complaint to be considered filed timely. On the 17th day, the office received plaintiff's filing fee.

The Court granted the Division's motion to dismiss the complaint. The Court held that it lacked jurisdiction to hear the case because plaintiff failed to perfect his appeal with the Tax Court within 90 days of the date of the Final Determination.

Subject Matter Jurisdiction – *James Construction Company, Inc., v. Director Division of Taxation and Commissioner, Department of Labor*, decided

June 22, 1999; Tax Court; No. 005268-98.

The Court ruled that the Tax Court does not have jurisdiction to hear unemployment compensation contribution cases. The Court found that neither the statutes, regulations, nor the Tax Court jurisdiction statutes grant judicial review by the Tax Court.

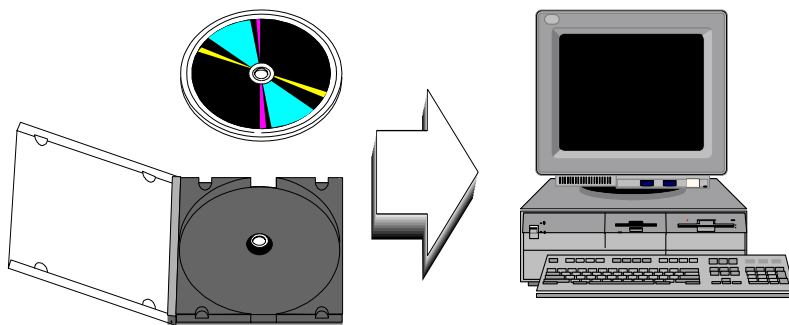
Corporation Business Tax Receipts Includable in Numerator of Allocation Factor – *Stryker Corporation, v. Director Division of Taxation*, decided August 16, 1999; Tax Court; No. 004852-96.

At issue is whether the Division properly included in the numerator of the receipts fraction all receipts generated by drop shipment transactions occurring in New Jersey destined for out-of-State customers.

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Osteonics Corporation, a New Jersey corporation, is the wholly-owned subsidiary of plaintiff, a Michigan corporation. Both plaintiff and Osteonics are located in the same building in Allendale, New Jersey. Plaintiff paid all the real estate related costs.

Osteonics sole function was to receive and process customer orders for plaintiff's products manufactured at the New Jersey plant. Osteonics then placed its order with plaintiff. Plaintiff packed and shipped the products to Osteonics' customers via common carrier, F.O.B. Allendale, throughout the United States. Thereafter, Osteonics would bill its customers.

Although plaintiff did not invoice Osteonics for each order, company representatives reviewed Osteonics' sales receipts in order to determine price and profit allocations. Essentially, Osteonics retained a gross margin of approximately twenty percent.

As regards to sales to Osteonics, plaintiff allocated sales by the shipment's destination state. Accordingly, for tax purposes, plaintiff included sales of only New Jersey destination shipments in the numerator of the receipts fraction on its New Jersey corporate business tax return. Pursuant to an audit, the Division determined that all sales to Osteonics should be included in the numerator of the receipts fraction regardless of destination.

The Court held that plaintiff's sales receipts from its direct shipments to Osteonics' out-of-State customers

to Osteonics are includable in the numerator under N.J.S.A. 54:10A-6(B)(6). The Court found that this statute required inclusion in the numerator of all receipts earned by the taxpayer in New Jersey including the intrastate transactions between plaintiff and Osteonics.

Local Property Tax

Added Assessment Law – *Seventy Five P-B Corporation v. Town of Phillipsburg*, decided February 19, 1999; Tax Court; No. 000205-98.

Plaintiff appealed an added assessment imposed for nine months of 1997 on a commercial building located in Phillipsburg. Construction on the improvement was completed on March 21, 1997. The added assessment was in the full amount of \$488,800, and an allocated amount of \$366,600 for the nine-month period. Plaintiff did not dispute the amount of the assessment, but considered it improper because the improvement qualified for exemption, commencing April 1, 1997 under the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 to 21, and under the municipal ordinance adopted pursuant to the Five-Year Law. Defendant acknowledged that the improvement qualified for exemption under the Five-Year Law, but contended that such exemption could not commence until January 1, 1998. Defendant sought a summary judgment to dismiss the appeal; plaintiff cross-moved for summary judgment based on its interpretation of the commencement date of the five-year exemption.

On October 1, 1996, Phillipsburg adopted an ordinance declaring the Town an Urban Enterprise Zone,

an "area in need of rehabilitation" as defined in N.J.S.A. 40A:21-3(b). The ordinance declared that "improvements to existing structures shall be exempt from assessment for a period of five years following completion of the improvement."

Phillipsburg denied plaintiff's application for exemption for tax year 1997, granting the exemption effective January 1, 1998 for a five-year period beginning on that date. The Assessor imposed the added assessment in dispute. Plaintiff filed a timely appeal with the Warren County Board of Taxation, which affirmed the added assessment. This Tax Court appeal followed.

Defendant asserted that the Five-Year Law neither provides for nor contemplates the granting of an exemption other than for full tax years and, therefore, contended that imposition of an added assessment for nine months of 1997 was entirely consistent with, and permitted by, the Law. It asserted that the five full years to which the Five-Year Law expressly refers commenced on January 1, 1998 and that, in the absence of a statutory provision requiring or authorizing exemption or abatement between the date of completion of the improvement and the commencement of the first full year after the date of completion, the exemption or abatement is inapplicable during that time period, and the improvement is fully taxable.

Defendant's motion for summary judgment was granted and plaintiff's cross-motion for summary judgment was denied. Defendant's interpretation of the Five-Year

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Law was consistent with the principle that qualification for tax exemption or abatement during a tax year does not result in a change of assessment for that tax year. The Court cited *City of Asbury Park v. Castagno Tires*, 13 N.J. Tax 488 (Tax Court 1993) which states: “As a general rule, absent an appeal, the taxable status of property is fixed as of October 1 of the pre-tax year; subsequent conversion to an exempt use does not render the property exempt for that year.” The Court noted that interpreting the Five-Year Law to prohibit “interim” added assessments would be an “inappropriate expansion of the holding” in *City of Newark v. Essex County Bd. of Taxation*, 309 N.J. Super. 476 (App. Div. 1998). The Legislature did not authorize extension of the Five-Year Law exemption to the interval between completion of an improvement and the next January 1. The Court rejected plaintiff’s contention that the exemption period commences with the first day of the month next following completion of the improvement. It noted that N.J.S.A. 40A:21-11(a) provides that “All tax agreements entered into by municipalities pursuant to Sections 9 through 12 of P.L. 1991, c.441 shall be in effect for no more than the five full years next following the date of completion of the project.” The nine month added assessment was deemed proper. N.J.S.A. 1:1-2 defines the term “year” as used in any statute as “a calendar year.” The Five-Year Law defines that period as five full (calendar) years. The improvement was subject to taxation in accordance with the normal local property tax procedure otherwise applicable to prop-

erty. These procedures include the imposition of an added assessment, a conclusion mandated by the New Jersey stitution and the Five-Year Law.

Exemption for Greenhouse Affirmed – *Van Wingerden v. Lafayette Twp.*, decided April 16, 1999; N.J. Tax Court, on remand from N.J. Superior Court, Appellate Division.

The Farmland Assessment Act at N.J.S.A. 54:4-23.12(a) taxes structures on agricultural or horticultural land in the same way as taxable nonfarm structures, but exempts single-use agricultural or horticultural facilities, that is, property employed in farming operations, used for growing or storage which is readily disassembled and separately marketable from the farmland and buildings, such as readily dismantled silos, greenhouses, grain bins, manure handling equipment and impoundments, except structures enclosing space within their walls for housing, shelter, or working, office or sales space are not to be exempted.

The issue on remand was whether a greenhouse was disqualified from property tax exemption because it enclosed a space within its walls used for working, office or sales space.

The disputed building was divided into two sections — the main greenhouse and the shipping house; but the sections were structurally and functionally integrated. The main greenhouse was utilized for growing flowers with an area for storing equipment used in horticultural operations. The shipping house held the

boilers; heat pumps; water tanks; heat shield, ventilation, and watering controls servicing the main greenhouse. The shipping house also had a refrigerated cool box for flower storage, tables for grading and sorting flowers, a workbench, a tool storage area, a desk, chair, and phone. For purposes of deciding tax status, the Court treated the greenhouse and shipping house which shared a common wall and entryway as one structure which was to be either exempt or taxable in its entirety.

In that the meaning of the phrase “working, office or sales space” was unclear and had not been clarified by prior case law, the Tax Court sought to interpret it consistent with the Legislature’s intent by resorting to the legislative history of the statute. The Court reviewed the N.J. State Board of Agriculture’s Report on “Agricultural Economic Recovery & Development Initiative” and the resulting Senate Bill that led to the enacting of P.L.1993, c.251 which exempted single-use agricultural or horticultural facilities. The Court also reviewed the basic terminology of the amended Farmland Assessment Act and, although not specifically defined, equated “farming operations” with agricultural/horticultural use of land and buildings. It went on to note that agricultural/horticultural use included animals, plants, fruits, nursery, floral, greenhouse products, etc. “produced for sale” and “grown for market, either retail or wholesale” and encompassed within those meanings “making crops ready for sale, including storage pending sale.” However, making a crop ready for sale did not permit altering the crop’s raw state by

processing it into an end product as, for example, turning cranberries into juice. From the Legislature's exempting of specific structures such as silos, used only for agricultural purposes, and its designation of disqualifying space, it was concluded that property tax relief was not meant for structures having purposes ancillary to agricultural or horticultural uses. The Court then determined that sales of agricultural/horticultural crops in or from an exempt structure did not prohibit exemption, but a structure having enclosed sales space would be prohibited.

As explained by the Court, an area in the greenhouse used for purposes not essential to the growing or storage of flowers, such as space used for the sale of flowers, floral displays, flower pots, vases or other merchandise or services would constitute disqualifying "sales space." Van Wingerden sold primarily to florists and florist distributors and did not encourage retail business. No sales staff was employed at the greenhouse. It was not visible from the road and there were no signs, advertising, or floral displays. Retail sales amounted to less than one percent of the total business. The Court found that the greenhouse contained no sales space. The Court also held that a single desk was not an office and the space it occupied was not "office space." Van Wingerden's business, tax and billing records, computer, copier etc. were maintained at his residence. Disqualifying "working space" again meant space used for purposes inessential for growing or storing crops such as preparing floral displays. The Court ruled that grading, sorting and treating flow-

ers with preservative were essential activities in making the flowers ready for sale. The work performed on the greenhouse walkways consisted of planting, maintaining and harvesting flowers. The storage area held equipment used in growing and harvesting flowers. The "single-use" of the structure, the growing of flowers, was not violated. Exemption was affirmed. □

In Our Legislature

Constitutional Amendment

Veterans' Property Tax Deduction — On November 2, 1999 the electorate approved an amendment to Article VIII, Section I, paragraph 3 of the New Jersey Constitution increasing the property tax deduction for veterans from the current \$50 level to \$100 in tax year 2000, \$150 in tax year 2001, \$200 in tax year 2002 and \$250 in each subsequent tax year.

Gross Income Tax

Higher Tax Filing Thresholds — P.L. 1999, c.260 (signed into law on October 18, 1999) increases the minimum income level at which taxpayers become subject to the New Jersey gross income tax and are obligated to file a New Jersey gross income tax return. The income filing threshold will increase over a three year period beginning with tax year 1999.

Health Insurance Costs for Self-employed Taxpayers

— P.L. 1999, c.222 (signed into law on September 22, 1999) amends the Gross Income Tax Act to allow the self-employed and those who are 2% or more shareholders in an S corporation to deduct 100% of the cost of health insurance for themselves,

their spouses and their dependents. The act took effect immediately and applies to tax years beginning on or after January 1, 2000.

Simplified Wage Tax Reporting for Employers of Domestic Workers

— P.L. 1999, c.94 (signed into law on May 3, 1999) simplifies employer reporting and payment requirements for household workers and permits gross income tax withholding and wage taxes for household workers to be reported and paid over to the Division of Revenue on an annual basis rather than on a quarterly (or more frequent) basis as formerly required.

Withholding returns and tax payments are due from employers of domestic workers on or before January 31 following the close of the calendar year. The new annual filing provisions do not apply to employers with employees other than domestic service workers.

This act took effect immediately and applies to all wages paid on and after January 1, 2000.

Local Property Tax

Homestead Rebates — P.L. 1999, c.259 (signed into law on October 15, 1999) modifies one provision of the recently enacted New Jersey School Assessment Valuation Exemption Relief and Homestead Property Tax Rebate Act (NJ SAVER and Homestead Rebate Act) P.L. 1999, c.63. The technical change incorporated in this bill ensures that benefits provided to tenants who are 65 years of age or older, or who are eligible to claim a deduction as a blind or disabled taxpayer, shall not be less than the minimum benefit provided to other eligible tenants (i.e., \$40 for tax year 1999; \$60 for tax year 2000;

continued on page 21

Winter 1999

in our legislature — from page 20

\$80 for tax year 2001; and \$100 for tax years 2002 and thereafter). The act took effect immediately.

Revaluation Relief Act of 1999 — P.L. 1999, c.216 (signed into law on September 21, 1999) amends the Revaluation Relief Act of 1993 by adding a provision permitting municipalities the option to grant revaluation relief abatements to eligible properties through the use of a property tax rebate mechanism rather than through the current property tax credit mechanism. In addition, the bill allows the revaluation relief to be phased in over five years rather than the three years allowed under current law.

The act took effect immediately and affects real property revaluation in the City of Newark.

Miscellaneous

Tax Court Proceedings — P.L. 1999, c.208 (signed into law on September 17, 1999) implements a series of recommendations promulgated by the Supreme Court's Committee on the Tax Court and adopts amendments dealing with county tax board appeals and certain Tax Court proceedings. The act took effect immediately. However, certain provisions apply to tax assessments for years commencing on or after January 1, 2000.

Sales and Use Tax

Secure Firearm Storage Act — P.L. 1999, c.254 (signed into law on October 15, 1999) provides an exemption from New Jersey sales and use tax for sales of vaults that provide safe and secure storage for

firearms. The act took effect December 1, 1999.

Firearm Accident Prevention Act — P.L. 1999, c.253 (signed into law on October 15, 1999) provides an exemption from New Jersey sales and use tax for sales of firearm trigger locks and other devices which enable a firearm to be made inoperable by anyone other than an authorized person. The act took effect December 1, 1999.

Exemption for Certain Vending Machine Sales — P.L. 1999, c.249 (signed into law on October 15, 1999) increases the allowable exemption from sales and use tax from \$0.10 to \$0.25 on sales of tangible personal property made through coin-operated vending machines. The exemption applies to sales of merchandise other than food and drink products. The act took effect immediately.

Prepaid Telephone Calling Arrangements — P.L. 1999, c.248 (signed into law on October 15, 1999) clarifies the imposition of New Jersey sales and use tax on the retail sale of prepaid telephone calling arrangements. The statute shifts the incidence of the tax from the point of use to the point at which the arrangement is sold to the consumer. Requiring vendors to charge tax on the retail selling price simplifies the tax collection and payment process. The act took effect January 1, 2000.

Exemption for Certain Aircraft Repairs, Equipment — P.L. 1999, c.246 (signed into law on October 15, 1999) provides an exemption from New Jersey sales and use tax for repairs on aircraft having a maximum takeoff weight of 6,000

pounds or more, as certified by the FAA.

The exemption also applies to machinery or equipment to be installed on such aircraft and to replacement parts therefor. However, the exemption does not apply to the sale of aircraft of this class. The act took effect January 1, 2000.

Expanded Exemption for Film and Video Industry — P.L. 1999, c.221 (signed into law on September 22, 1999) expands the sales and use tax exemption for the film and video industry to include purchases of tangible personal property for use directly and primarily in the production of film or video for sale, including parts, motor vehicles, tools and supplies. The act also exempts the services of installing, maintaining, servicing or repairing tangible personal property that is entitled to the exemption.

The act took effect December 1, 1999 and applies to property sold and services rendered after that date. □

tax calendar

january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
							1
2	2	3	4	5	6	7	8
0	9	10	11	12	13	14	15
0	16	17	18	19	20	21	22
0	23	24	25	26	27	28	29
	30	31					

January 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

January 18

- CBT-100** Corporation Business Tax—Annual return for accounting period ending September 30

continued

January 18 - continued

- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

January 20

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month
- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return

continued

January 20 - continued

- ST-50** Sales and Use Tax—Quarterly return
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-450** Sales and Use Tax—Salem County—Quarterly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

January 25

- PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

January 31

- NJ-927 & NJ-927-W** Gross Income Tax—Employer's quarterly report

february

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
			1	2	3	4	5
2	6	7	8	9	10	11	12
0	13	14	15	16	17	18	19
0	20	21	22	23	24	25	26
0	27	28	29				

February 10

- CWIP-1** Cigarette Tax—Informational report by wholesalers
- CWIP-2** Cigarette Tax—Informational report by wholesalers

February 15

- CBT-100** Corporation Business Tax—Annual return for accounting period ending October 31
- CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year
- NJ-500** Gross Income Tax—Employer's monthly remittance

February 22

- CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers
- GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used
- GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel
- MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

continued

February 22 - continued

- SCC-5** Spill Compensation and Control Tax—Monthly return
- ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return
- ST-51** Sales and Use Tax—Monthly remittance
- ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return
- ST-350** Cape May County Tourism Sales Tax—Monthly return
- ST-451** Sales and Use Tax—Salem County—Monthly Return
- TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return
- UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

February 25

- PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

march

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2				1	2	3	4
0	5	6	7	8	9	10	11
0	12	13	14	15	16	17	18
0	19	20	21	22	23	24	25
	26	27	28	29	30	31	

March 10

CWIP-1 Cigarette Tax—Informational report by wholesalers

CWIP-2 Cigarette Tax—Informational report by wholesalers

March 15

CBT-100 Corporation Business Tax—Annual return for accounting period ending November 30

continued

March 15 - continued

CBT-150 Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

NJ-500 Gross Income Tax—Employer's monthly remittance

March 20

CR-1 & CNR-1 Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

GA-1D Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

GA-1J Motor Fuels Tax—Jobber's monthly report of gallons of fuel

MFT-10 Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

SCC-5 Spill Compensation and Control Tax—Monthly return
continued

March 20 - continued

ST-21 New Jersey/New York Combined State Sales and Use Tax—Monthly return

ST-51 Sales and Use Tax—Monthly remittance

ST-250 Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

ST-350 Cape May County Tourism Sales Tax—Monthly return

ST-451 Sales and Use Tax—Salem County—Monthly Return

TP-20 Tobacco Products Wholesale Sales and Use Tax—Monthly return

UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

March 27

PPT-41 Petroleum Products Gross Receipts Tax—Monthly return

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from the director's desk

Message to Tax Practitioners

The income tax filing season for 1999 brings a number of changes, both administrative and legislative. Look for the “New for '99” symbols throughout the 1999 return instruction booklets. Here is a summary of those changes:

Administrative Changes

- Tax preparers may use either their social security or Federal preparer tax identification number for purposes of filing New Jersey returns or refund claims, provided they use the same number for both State and Federal filings.
- If a payment is due, the check or money order and payment voucher may be enclosed *in the same envelope* with the return.
- Extra supplies of the envelope for mailing Forms NJ-1040 and HR-1040, and payment vouchers for the resident income tax return (Form NJ-1040-V) may be ordered from the Division of Taxation. A large-size (9" x 12") envelope designed to permit return(s) to be mailed flat (not folded) is also available.

To request envelopes or vouchers, call the Automated Tax Information System from a Touch-tone phone at 1-800-323-4400 (within NJ) or 609-826-4400 (anywhere), or write to Taxpayer Forms Services, PO Box 269, Trenton NJ 08695-0269. Supplies are limited, so order early.

Legislative Changes

- **New Filing Threshold.** The income levels at which taxpayers are required to file a New Jersey income tax return and pay tax will increase over a three-year period. For 1999 the minimum amount is \$10,000 or less (\$5,000 or less for married persons filing separately).
- **Homestead Rebate.** Tenants who are under age 65 and not blind or disabled and whose income is between \$40,000 and \$100,000 are eligible for a Homestead Rebate of \$40 for 1999. This amount will increase to \$60 for tax year 2000, \$80 for tax year 2001 and \$100 for tax year 2002.